

The Pre-Employment Contract: An Approach to Staff Retention

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It's a typical Monday morning and the sheriff or chief is going through his in-basket when he comes across the following letter:

Dear Sir:
Thank you for the opportunity for me to begin my career with your agency, but I have decided to take a position with the . . . department.

This scene is repeated too frequently in law enforcement agencies throughout the nation. The chief executive initials his acceptance on the document and forwards it to the personnel officer. The exit interview and paperwork are completed, and another vacancy is created in an already understaffed, overworked department.

The Problem

In today's recruitment climate, the qualified lateral candidate is a valuable commodity. Like the free agent in sports, such a candidate can command any number of offers from law enforcement agencies. The

appeal of working for one agency for twenty years is not apparent to the new, young officer, especially in his or her first years of employment. Instead, the junior officer tends to think in terms of the geographical convenience and interpersonal relationships of the present assignment.

The reciprocity of law enforcement pension plans provides little resistance to lateral

movement, and in the battle for survival, law enforcement departments do not hesitate to plunder neighboring agencies. Quite naturally, the employees who are recruited are often among the best and brightest an agency has to offer.

When a peace officer resigns, retires, or is otherwise separated from service, it may take a full year to recruit, hire, and train his or her replacement. During the interim, overtime may be required to fill the vacant position. We estimate that it costs \$20,000 to fill a vacant position in our agency.

An agency can at least perceive a return on its investment when a veteran officer leaves after several years of service, but that same sense of return is not realized when an employee with less than two years of service transfers to another agency. Not only must valuable resources be expended to secure and train a

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replacement, but the specter of new personnel leaving for other agencies does nothing for the morale of the remaining staff.

Does Your Agency Have A Problem?

A simple check to determine if your department is a "feeder" agency is to note the number of new hires over the past three years and compute the proportion of that total who have transferred to other departments. If the number approaches 10 percent or more, your agency is giving away valuable training to supply the needs of other departments. Contra Costa County realized that was happening



when, in 1985, nine officers moved laterally to other agencies.

The Pre-Employment Contract

Into this arena, our agency introduced the pre-employment contract. Very simply, the pre-employment contract requires an employee to reimburse the agency for training costs if the employee moves to another agency within a specified period of time, usually two to three years.

When we researched pre-employment contracts in late 1985, we found they were in use in a number of police departments in southern California and in law enforcement agencies in other states. Except for a copy of a court judgment obtained against a contract violator in a southern California city, we found no legal information. Our primary concerns were as follows:

- Was the pre-employment contract legal?
- What amount of payback should be required?
- Would it be necessary to meet and confer with labor representatives?
- Would it have an adverse effect on recruiting?
- Would it reduce turnover?

Legality

The basics of contract law are quite simple. Two parties may agree to almost anything that is not illegal, immoral, or against public policy. Employment contracts are not unique, either in private industry or the public sector, including the military.

Our county counsel provided us with an opinion that a pre-employment contract was indeed a legal obligation. The contract meets basic conditions for enforceability, i.e., consideration is given by both parties for something valuable. A candidate has no inherent right to a civil service position, and a new employee regularly agrees to any number of agency and contract provisions when accepting a position.

To avoid any sense of coercion, attorneys recommended that the contract be advertised and discussed early in the testing process. In this way, candidates would enter the testing process with full knowledge of the agency's requirements.

Amount of Reimbursement

There are several reasons for carefully determining the amount of reimbursement the agency will

require the employee to pay. First, the amount should be sufficient to act as a deterrent to breaking the contract.

Second, and more importantly, the amount should be tied logically to the department's expenditures in hiring and training. Although the contract may be legal, its enforceability will probably depend on a judge's opinion as to the "reasonableness" of the conditions within the contract. An agency might find it difficult simply to demand payment of an arbitrary amount; therefore, the amount needs to be directly related to department expenditures.

The most logical expenditure to require an employee to reimburse is the cost of training. In our agency, a recruit is hired and is first sent to a training academy. All but approximately 30 percent of the recruit's salary while at the academy

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becomes the first element of the reimbursement, should the employee break his or her contract.

Upon graduating from the training academy, the recruit goes into detention training for a period of eight weeks. Each trainee is

assigned to a training officer and is essentially an "extra body." The salary paid while the new hire is in detention training becomes the second element of the payback.

About the seventh month of employment, the new hire is assigned to patrol training for eleven weeks. Again, the trainee is an extra body, unable to staff a post, and his or her salary while receiving patrol training is the third and final element of the reimbursement package.

In each of these phases, the employee has received valuable, career-enhancing training while

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providing no direct service to the agency. The total salary paid to the employee while in a training capacity, except for 30 percent of the salary during the training academy phase, becomes the amount of the reimbursement required if the employee breaks the contract.

Departments that decide to use pre-employment contract need to develop a chart that can be attached to the contract to show prospective employees how much money they would owe at each point during the training period. To make the

contract as clear as possible, should it ever be challenged in court, we recommend a "depreciation schedule."

For example, an employee may owe up to \$10,000 after completing all three stages of training. This \$10,000 is then depreciated over the thirty-month term of the contract. Thus, if the employee resigns at month twenty, he or she may owe \$4,000; if the employee terminates one month before the end of the contract, only \$500 may be owed.

Other elements could certainly be included in the amount to be

reimbursed:
benefits paid as part
of the salary
package, safety
equipment issued,
and ammunition
used at the training
academy could all
be specified as
reimbursable items.

Whatever items are included, the agency should clearly define and cost out all specifics that apply to its own contract.

Labor Relations

Perhaps the most difficult question related to a pre-employment contract, other than the general question of enforceability, is whether agency staff must meet and confer before the contract can be implemented.

Believing that our contract's enforceability could hinge on the meet-and-confer issue, we contacted a number of labor experts during the contract planning stage. The more conservative experts indicated that it was necessary to meet and confer, as the potential payment of salary was a "term or condition of employment."

Other labor experts were less sure. They saw the pre-employment contract as a gray area of labor relations, as it involved a contract signed prior to employment and reimbursement that took place after the employee had resigned and was no longer represented by a bargaining unit.

We also believed that it would be good policy to get the Deputy Sheriffs Association involved in the problem of employee retention and in its solution. The Association generally was opposed to the pre-employment contract, but members eventually were convinced that it would benefit them by discouraging others' early resignations.

Fortunately, we were enjoying a cooperative period in our labor relations atmosphere, and the Association sincerely wanted to help the administration resolve the problem. The Memorandum of Understanding (MOU) between the Association and the county was modified to include the pre-employment contract.

The importance of securing labor's cooperation cannot be over-estimated. In the only quasi-legal finding on pre-employment contracts in law enforcement, a public employment relations board ruled that such contracts were a mandatory subject of collective bargaining. The city unsuccessfully urged that the reimbursement was a "hiring requirement" and was not subject to collective bargaining. The board ruled that the issue was "compensation-related." [In *Re: City of Mt. Vernon, 2 Labor Lawyer* 599, 23 *GERR* (BNA) 667].

Exceptions

A contract of this type needs to address exceptional cases, in which reimbursement would not be required if the contract is broken. One of these, clearly, is if the employee is not performing well and resigns instead of being terminated.

A second reasonable exception is if the employee resigns to leave the field of law enforcement. It would seem to be in the best interest of the agency not to force a person to continue in a career he or she had decided not to pursue. For this reason, the contract needs to specify the period of time in which the contract is in effect. For example, the contract could require reimbursement only if an employee resigns and takes another law enforcement job within a specified number of days.

A third exception would be an unusual or emergency occurrence that forces an employee to seek work in another geographical area. Including such an exception in the contract also serves to demonstrate the good faith and reasonableness of the agency.

Impact on Recruitment

To date, no candidate has refused to sign the pre-employment contract. No candidate has advised a recruiter that, due to the contract, he or she would not apply for a job with Contra Costa County.

It is not known if candidates have silently withdrawn from the process because of the contract. In all probability, of course, a candidate expressing reluctance to sign a pre-employment contract would be the employee most likely to violate the contract.

Violations and Restitution

If contract violators are not pursued diligently, a pre-employment contract will quickly lose its effectiveness. Our two violators were vigorously pursued through a private law firm specializing in labor law.

In the first instance, a recently-hired candidate tired of his rather lengthy commute and took a position in a

city near his home. The employee was still on probation and owed a relatively small amount, and, after

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several consultations with attorneys, he signed an agreement that enabled him to repay the county in thirty-six monthly installments.

The second violation involved a repayment amount of over \$5,000. The employee paid 60 percent of the amount in cash and agreed to pay the remainder in thirty-six monthly installments.

A staff member should be assigned the collection details in order to ensure that the contract is enforced. Should an employee refuse to repay the training costs, it is imperative for the agency's attorney to pursue a judgment against the employee in the appropriate court of jurisdiction. All necessary steps must be taken to enforce the judgment.

The object of a pre-employment contract is not to secure additional revenue but to discourage employees from moving laterally to another agency. In this regard, your agency has one final opportunity to influence the employee who is considering resignation.

Before the employee formally leaves your agency, a background

investigator from the hiring agency will undoubtedly visit your department to review the prospective employee's personnel file. This is a good time to remind the employee of his or her pre-employment commitment. While the employee may have already made the decision to transfer, it does no harm to remind him or her of the obligation.

Results

Between March 1986 and August 1988, 120 deputy sheriffs had been hired and required to sign the pre-employment contract in Contra Costa County. In two and one-half years following the inception of the contract, only two new hires had violated the terms of the contract by transferring to another law enforcement agency. This was a marked improvement over the previous two and one-half years, in which twelve persons left for other law enforcement agencies.

It is important, however, to analyze the pre- and post-contract statistics

closely to ensure that this comparison is fair and accurate. For example, eight persons hired in July 1988 had been employed only one month and were not be included in this analysis.

Table 1 provides a more accurate comparison. Of the persons hired under the pre-employment contract, only sixty-six had been employed at least one full year by May 1, 1988. As a comparison or control group, we looked at the sixty-six deputy sheriffs who were hired immediately before the pre-employment contract was implemented, from November 1984 through February 1986.

Of the control group, hired prior to the pre-employment contract, sixteen officers resigned, five to seek other employment and eleven in lateral moves to other agencies. Of those making lateral moves, four resigned in their first year of employment.

In contrast, only one officer of the sixty-six hired under the pre-

employment contract left in the first year of employment.

Thus, the only unbiased statistical comparison we can make, controlled for length of service and number of hires, is as follows: four out of sixty-six officers hired prior to the contract left in their first year of employment; one out of sixty-six hired after the contract left in his first year.

In one more year, all sixty-six officers hired after the pre-employment contract was implemented will have finished their thirty-month contractual obligations, and a full comparison between the two groups will be possible. If there are no additional resignations due to lateral transfers in the next year, the final tally for the two groups will stand at eleven lateral transfers prior to and two lateral transfers after the employment contract.

It is clear from the resignation records that the pre-employment contract generally has reduced the number of resignations. However, it will take several more years of statistics to conclusively prove the relationship.

Summary

Some law enforcement agencies are in the enviable position of being the team on which everyone wants to play. They can draw many of their new employees from other law enforcement agencies and have

Table 1: Results of the Pre-Employment Contract

	Pre-contract	Post-contract
<i>From a total of 66 employees:</i>		
Total resigned	16	6
Transferred to other agencies . . .	11	2
Transferred in first year	4	1
Transferred in years 1-3	7	1

Tips for Developing Pre-Employment Contracts

1. Write the contract in simple, brief, understandable words. An elaborate contract with a lot of fine print may be more difficult to enforce.
2. Put an emergency "exception" clause in the contract. This will show your agency's reasonableness in an enforcement proceeding.
3. Determine a reasonable amount for reimbursement which is understood and acknowledged by the candidate at the time the contract is signed.
4. Get the written approval of your agency's attorneys, counsel, or board of supervisors. The contract is really with the governing body.
5. If at all possible, meet and confer with your labor association and have the agreement placed in the MOU.
6. Once pre-employment contracts are implemented in your agency, make sure its use is advertised properly during the hiring process and not sprung on the candidate at the last minute.
7. As chief or sheriff, assign to one individual the responsibility for administering and enforcing the contract.
8. Make every effort to dissuade an employee from resigning before it is too late. One approach is to notify the employee annually of the remaining obligation under the contract.
9. Enforce the contract with all the speed and force that can be mustered. The first violation of the contract is an especially critical challenge.

little trouble with retention and turnover.

At the other end of the spectrum are agencies that feel they are little more than training grounds for new law enforcement officers. These agencies are always on the defensive, always protecting their flanks. The revolving door syndrome is extremely demoralizing and costly to them.

The pre-employment contract will not eliminate lateral transfers, of course. However, agencies with a retention problem will find it a useful and desirable tool for reducing personnel turnover.

A pre-employment contract, properly drawn, advertised, and enforced, will decrease turnover; law enforcement officers typically have been raised on respect for laws, contracts, and obligations. The last thing a newly-hired officer wants is a wage garnishment from his previous agency.

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